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8 *Attorneys for Clear Energy Systems, Inc.*

9 **IN THE UNITED STATES BANKRUPTCY COURT**

10 **FOR THE DISTRICT OF ARIZONA**

11 In re:

12 CLEAR ENERGY SYSTEMS, INC.,

13 Debtor.

In Proceedings Under Chapter 11

Case No.: 2:14-bk-12716-BKM

14 **APPLICATION TO EMPLOY**  
15 **SPECIAL PURPOSE INTELLECTUAL**  
16 **PROPERTY VALUATION**  
17 **CONSULTANTS FOR THE DEBTOR**

18 CLEAR ENERGY SYSTEMS, INC. ("Debtor"), the Debtor and Debtor-in-Possession  
19 in the above referenced Chapter 11 bankruptcy case, by and through its undersigned counsel,  
20 hereby requests the Court enter an order authorizing the employment of special purpose  
21 intellectual property consultants Douglas A. Chaikin ("Chaikin")<sup>1</sup>, and Stephen K. Clarke and  
22 Edward McMullin of Berkeley Research Group, LLC ("BRG" and together with Chaikin the  
23 "IP Consultants") for the purpose of assessing the patent issues and value of Debtor's  
24 intellectual property in its current state of development in connection with the plan of  
25 reorganization. Attached as **Exhibit A** is Debtor's proposed post-petition engagement  
26 agreements with the IP Consultants, which include descriptions of services, and compensation  
arrangements. Debtor hereby files this Application pursuant to 11 U.S.C. §327, 328, 329 and  
1107, *Fed. R. Bankr. P.* 2014 and 2016, Rule 2014-1, *Local Bankruptcy Rules for the District of Arizona*,

<sup>1</sup> Debtor seeks to employ Chaikin solely as an outside consultant and not in any legal capacity.

1 and the United States Trustee's Guide to Applications For Employment of Professionals and  
2 Treatment of Retainers, as revised in April 2008, and under the terms and conditions described  
3 herein.

4  
5 1. The Debtor filed a Petition for relief under Chapter 11 of Title 11, United States  
6 Code, on August 15, 2014, and is operating its business as a Debtor-in-Possession. No Trustee,  
7 Examiner or Committee has been appointed in this Case as of the date of this Application.

8 2. The Debtor has selected the IP Consultants to assist in these proceedings, subject  
9 to the approval of the Bankruptcy Court, for the purpose of conducting research and preparing  
10 an assessment of the Debtor's genset prototype;

11 3. The Debtor has proposed the employment of Chaikin as an outside consultant  
12 to examine the Debtor's open and pending matters with the U.S. Patent and Trademark Office  
13 in order to gain an estimate for the cost of proceeding with those matters to completion.  
14 Chaikin has extensive experience in intellectual property matters as shown on Chaikin's  
15 curriculum vitae attached to this Application as **Exhibit B**.

16 4. The Debtor has proposed the employment of BRG as outside consultants  
17 because of their significant experience in the valuation of intellectual property, as evidenced by  
18 the curriculum vitae of Stephen K. Clarke attached to this Application as **Exhibit C**.

19 5. To the best of the Debtor's knowledge, the proposed IP Consultants have no  
20 connection with any of the parties in interest, or their respective attorneys in this proceeding  
21 and are disinterested persons as defined by the Bankruptcy Code. The declarations of Stephen  
22 K. Clarke and Douglas A. Chaikin are filed contemporaneously in support of this Application  
23 and incorporated herein;

24 6. The IP Consultants represent no interest adverse to the Debtor as Debtor-in-  
25 Possession, or to the estate, in the matters upon which they are to be engaged, and Debtor  
26 believes the IP Consultants' employment would be in the best interest of this estate.

1           7. Debtor is informed that the proposed IP Consultants' estimate the total work  
2 performed on this matter will not exceed forty (40) hours or approximately \$17,000. This figure  
3 would not include travel expenses to present the study findings or any copy/postage expenses.

4           8. Debtor proposes to be authorized, to pay an advance retainer to BRG in the  
5 amount of \$5,000 for services, plus reimbursement for reasonable expenses incurred, for their  
6 valuation work. Payment will be made promptly by the Debtor upon approval with cash on  
7 hand.

8           9. The Debtor expressly reserves the right to dispute any invoices for  
9 reimbursement submitted by the IP Consultants. IP Consultants' proposed hourly rates for  
10 services rendered are as follows:

11                               Chaikin: \$360 per hour

12                               BRG Director: \$375-\$495 per hour

13           10. Other than as set forth above and in the agreements attached to this Application,  
14 there are no proposed arrangements to compensate the IP Consultants. Neither the Debtor,  
15 nor any other party, has made any promises to the IP Consultants, or any employee of the IP  
16 Consultants, for compensation in connection with this case other than as set forth herein and  
17 in accordance with the provisions of the Bankruptcy Code.

18           11. The proposed IP Consultants understand and agree that their compensation is  
19 subject to approval of this Court, and agree to keep detailed records of the services rendered  
20 and costs incurred during their employment in this bankruptcy case.

21           WHEREFORE the Debtor respectfully requests entry of an order in the form attached  
22 hereto as **Exhibit D** and lodged concurrently herewith:

23           A. Granting this Application;

24           B. Authorizing the Debtor to retain and compensate the IP Consultants *nunc pro tunc*  
25 effective as of the start of their post-petition work on the terms set forth in this Application;

26           C. Authorizing the \$5,000 advance retainer payment to BRG; and

1 D. Granting the Debtor such other and further relief as is just and proper.  
2 RESPECTFULLY SUBMITTED this 28th day of September, 2015.

3 **FREEMAN HUBER LAW PLLC**

4  
5 By: /s/ Shelton L. Freeman

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10 ORIGINAL filed via the CM/ECF  
11 Electronic Notification System and served to  
12 all parties that have requested ECF  
13 notification in the Bankruptcy Case.

14 COPIES of the foregoing served the 28th day  
15 of September, 2015 via email on all parties in  
16 the service list attached to the Court's copy  
17 only.

18 By: /s/ Rachel H. Milazzo

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